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Attorney Docket No.: 23091/14 (ACT-176)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S): Sherrer et al.

EXAMINER: Unknown GROUP ART UNIT: 2872

SERIAL NO.: 10/022,726

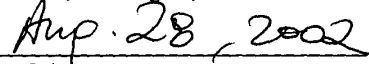
FILED: December 20, 2001

FOR: OPTICAL SWITCH ASSEMBLY WITH FLEX PLATE AND METHOD
FOR MAKING

CERTIFICATE OF MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage in an envelope addressed to: BOX MISSING PARTS, Assistant Commissioner for Patents, Washington, DC 20231 on:

By: 
Carmen M. Constantinescu


Date: Aug. 28, 2002

BOX MISSING PARTS
Assistant Commissioner for Patents
Washington, DC 20231

PETITION UNDER RULE 37 CFR 1.47

Dear Sir:

The below signed attorney for the applicant hereby sets forth the following facts to support the filing of the above-identified application without the signature on the declaration of one of the inventors, Daniel A. Steinberg. This petition is being submitted together with a response to Notice of Missing Parts dated January 28, 2002 filed herewith.

To the best of my information and belief of the pertinent facts, one of the co-inventors, Dan A. Steinberg, refuses to sign the declaration. The other co-inventor has signed the declaration.

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On information and belief, the following are the material facts:

1. The company where all the inventors were/are employed (Haleos Inc.) is in Chapter 11 bankruptcy proceeding.
2. Mr. David W. Sherrer, is an officer of Haleos, Inc..
3. Mr., Sherrer has informed me that he personally attempted to reach Daniel A. Steinberg. Mr. Sherrer asked Mr. Steinberg to sign a declaration of inventorship in the instant patent application, and Mr. Steinberg refused to sign.
4. Attach to this declaration (Exhibit 1) is an E-mail from Mr. Sherrer to me with a description of his communication with Mr. Steinberg regarding this and other pending patent cases.
5. Mr. Sherrer informed me that due to the company's current financial situation the company was shut down during the weeks of August 5th and July 29th of 2002, which made it extremely difficult to pursue this matter further during those two weeks.
6. Mr. Steinberg is a registered patent agent (Reg. No. 45129, 410 Lee Street, Blacksburg VA USA 24060, the address listed in the PTO's roster of attorneys and agents), who is certainly aware of the application, its contents and the importance of the inventor's signature.
7. During years 2000, 2001, and 2002 the company filed more than 100 patent applications. Due to the Chapter 11 bankruptcy proceedings, Mr. Sherrer's company could not keep a number of applications pending, so they went abandoned. The company tries to maintain as many applications covering its valuable technology pending as possible and, hopefully, have them examined and later issued as patents.
8. My firm was asked to assist Haleos Inc. in the task of keeping the pending applications alive, receiving the final authorization to proceed about a month ago. We are trying to save

numerous applications with impending bar dates/expiring statutory periods, and while the best possible efforts to preserve the patent portfolio have been made, the company's shut down has made it close to impossible to obtain documents pertinent to the pending cases.

9. As stated by Mr. Sherrer, all inventors are under the obligation to assign the invention to Haleos.

10. The applicants will be irreparably damaged by the loss of benefit of the application due to Mr. Steinberg's refusal to sign the declaration.

If any additional information is required in connection with this petition, please contact the undersigned. Please charge the fee due with this petition to deposit account 50-0369.

Respectfully submitted by:

August 28, 2002

Maria Eliseeva by Thomas
Maria Eliseeva, Esq. Reg. No. 43,328
Attorney for Applicants
Brown Rudnick Berlack Israels LLP
Customer No. 21710, Box IP
One Financial Center
Boston, MA 02111
Phone: 617-856-8340
Fax: 617-856-8201

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